

STATE OF MICHIGAN  
COURT OF APPEALS

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JESUS RODRIGUEZ,

Plaintiff-Appellant,

v

CAROL S. GAUGER d/b/a STARMOUNT  
STABLES,

Defendant-Appellee.

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UNPUBLISHED

May 12, 2005

No. 252138

Saginaw Circuit Court

LC No. 01-037093-NO

Before: Murphy, P.J., and White and Smolenski, JJ.

MEMORANDUM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, defendant's stable hand, was injured when a horse stepped on his foot as he was walking the horse to its stall. Plaintiff claimed that the horse was spooked by one of defendant's dogs, Sandy, and that defendant was negligent in failing to properly restrain the dog. In granting summary disposition, the trial court determined that defendant owed no duty to plaintiff. We agree. The determination of the existence of a legal duty presents a question of law that we review de novo. *Valcaniant v Detroit Edison Co*, 470 Mich 82, 86; 679 NW2d 689 (2004); *Benejam v Detroit Tigers, Inc*, 246 Mich App 645, 648; 635 NW2d 219 (2001).

In assessing whether a duty exists in a negligence action involving an injury caused by an animal, it is necessary to keep in mind the normal characteristics of the animal, as well as any abnormally dangerous characteristics of which the defendant has knowledge. *Trager v Thor*, 445 Mich 95, 105; 516 NW2d 69 (1994). Dogs, cats, and other domestic animals are generally so unlikely to do substantial harm that their possessors have no duty to keep them under constant control. *Id.* at 105-106.

However, if the possessor of such an animal . . . has knowledge of some dangerous propensity unique to the particular animal, or is aware that the animal is in such a situation that a danger of foreseeable harm might arise, the possessor has a legally recognized duty to control the animal to an extent reasonable to guard against that foreseeable danger. [*Id.* at 106.]

Here, there was testimony that most horse farms had dogs roaming around and that interaction with the horses could be expected. Sandy's occasional barking or running with the horses cannot in any way be deemed an abnormally dangerous characteristic for a farm dog. Additionally, the testimony in this case demonstrated, at most, that Sandy would run with the horses or bark at them when they were out in the paddocks. There was no testimony that she acted that way in the barn. We cannot conclude, on the basis of the record, that defendant was aware that Sandy was in such a situation that a danger of foreseeable harm to plaintiff might arise. Accordingly, defendant owed no duty to plaintiff.

Affirmed.

/s/ William B. Murphy  
/s/ Helene N. White  
/s/ Michael R. Smolenski